

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SAMTERIOUS GORDON,

Plaintiff,

v.

OPINION AND ORDER

22-cv-78-wmc

K. LOBENSTEIN and JANUSZ PLUCINKSI,

Defendants.

Pro se plaintiff Samterious Gordon is proceeding to trial on a claim that defendants Kenneth Lobenstein and Janusz Plucinski refused to promote him at his prison job because he filed an inmate complaint about his wages in violation of his First Amendment speech rights. The case is scheduled for a jury trial on October 10, 2023, with a final pretrial conference by zoom videoconference on September 29, 2023, at 10:00 a.m. The following order addresses defendants' motions in limine¹ and other trial matters.

OPINION

A. Defendants' motions in limine (dkt. #68)

- 1. Exclude reference to the details of any other lawsuits against the Department of Corrections or the Department of Corrections' current or former employees.**

This motion is GRANTED, as other lawsuits against DOC or DOC employees are irrelevant to the issues remaining in this case.

¹ Plaintiff did not file any motions in limine.

2. Exclude reference to the details of other legal proceedings involving the defendants or defense witnesses, or any inmate grievances against the defendants or defense witnesses except those from plaintiff related to this case.

This motion is GRANTED, with the clarification that plaintiff may present evidence, testimony and argument about the inmate complaints that he says motivated defendants' alleged retaliatory conduct at issue in this case. He may also use evidence falling within the scope of this motion: (1) for proper impeachment purposes; and (2) subject to discussion outside the jury's presence as to whether defendants have "opened the door" to its use.

B. Other trial matters

1. Street clothes

Incarcerated plaintiffs may appear at trial in street clothes rather than prison garb. Gordon may wear street clothes, but it is his responsibility to arrange for that clothing. If Gordon wishes to wear street clothes during trial, he should arrange for clothes to be available for him by asking a family member or friend to either mail or deliver clothing to the office of the Clerk of Court, 120 N. Henry Street, Room 320, Madison, WI 53703, so that the clerk's office receives the clothing no later than 8:00 a.m. on the first day of trial. Alternatively, Gordon may ask prison officials to transfer his clothing to the clerk's office when they bring him to the courthouse for trial. Whether the prison officials would agree to do this is a matter within their discretion. **Gordon should be prepared to address at the September 29 final pretrial conference whether he has made, or will make, arrangements for street clothes to be delivered to the court.**

2. Restraints

Restraints, particularly visible restraints, are rarely necessary in prisoner trials in this court. But the court will take input from the parties at the final pretrial conference on what they believe is necessary for Gordon. Should restraints be necessary, a stun belt is often appropriate.

3. Order of witnesses

Gordon has identified 5 witnesses that he intends to call at trial: Christopher Tipton; Robert Duncan; Jahmahn Carroll; defendant Lobenstein; and defendant Plucinski. The three inmate witnesses will testify via Zoom videoconference and the two defendants will be available to testify in person. **Gordon should be prepared to address at the September 29 final pretrial conference the order in which he intends to call these witnesses so that the court can arrange the inmate testimony with their respective institutions.**

ORDER

IT IS ORDERED that:

- 1) Defendants' motions in limine (dkt. #68) are GRANTED.
- 2) At the September 29, 2023 final pretrial conference, plaintiff should be prepared to address: (1) whether he has made arrangements for street clothes to be delivered to the court for trial; and (2) the order he intends to present his witnesses.

Entered this 22nd day of September, 2023.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge